

ITEM # \_\_\_\_\_

PREPARED BY: THOMAS WILLIAMS

COMMISSIONER \_\_\_\_\_

APPROVED BY: THOMAS WILLIAMS

**RESOLUTION TO APPROVE AN AGREEMENT TO RECOUP THE COST OF PROVIDING IMPROVEMENTS, FACILITIES AND SERVICE TO BEARMAN GOLDEN GARDENS, INC, a Tennessee not-for-profit corporation, AS REQUIRED BY APPLICABLE TAX EXEMPTION STATUTE, Tenn. Code Ann. 67-5-207, et seq.**  
SPONSORED BY COMMISSIONER DEIDRE MALONE

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**WHEREAS**, T.C.A. Section 67-5-207 states that property of Tennessee not-for-profit corporations built under Section 202 of the National Housing Act of 1959 and used for housing for low income elderly or handicapped persons may be exempted from real property taxes, as long as such property complies with the provisions of said Section; and

**WHEREAS**, T.C.A. Section 67-5-207(a)(2) provides for recoupment of the costs of providing essential services by local governments in lieu of real property taxes being made on property granted an exemption under this Section by the State of Tennessee Board of Equalization, and the amounts shall not exceed the estimated costs incurred by municipalities or counties to provide improvements, facilities and/or services to the exempt property; and

**WHEREAS**, Bearman Golden Gardens, Inc., a qualifying Tennessee not-for-profit corporation ("BGG") owning real property located at 4755 Neely Road, Memphis, Shelby County, Tennessee (the "Property") has applied to the State Board of Equalization for an exemption from real property taxes for the Property and said exemption is conditioned upon certain conditions, including the filing of an agreement for payment in lieu of real property taxes to the County, being previously met; and

**WHEREAS**, BGG and Shelby County, Tennessee desire to enter into this Agreement for recoupment of County costs for improvement, facilities and services provided to BGG; and

**WHEREAS**, by resolution adopted and approved on December 4, 2007, the City Council of the City of Memphis, Tennessee delegated its authority to enter similar agreements, pursuant to T.C.A. Section 67-5-207, et seq. to The Health, Educational and Housing Facility Board of the City of Memphis (the "City"), said delegation conditioned upon the exemption applicant paying twenty-five (25%) of the ad valorem taxes that would have been due. The City approved an agreement with BGG by resolution of its Health Ed Board on June 11, 2003, and proposed similar action under cooperative agreements with Shelby County Government. However, based upon information presented or submitted to this Commission, the former cost allocation of Five (\$5) Dollars per unit per month applied only to county costs is continued.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF SHELBY, TENNESSEE, that:**

1. The Agreement for Recoupment of Costs Agreement designated by the State Board as a "Payment in Lieu of Taxes" for Bearman Golden Gardens, Inc is hereby approved.
2. Beginning with the effective date of the real property exemption for the Property granted by the State Board of Equalization, BGG shall pay to the County taxing authority for each calendar year (and pro rata for any part of a calendar year for which the tax exemption is in effect) an amount equaling Five (\$5) Dollars per unit per month to recoup the costs incurred by the County to provide improvements, facilities and/or services to the Property.
3. Within thirty (30) days of the granting of the tax exemption by the State Board of Equalization, BGG shall pay to the County all outstanding real property taxes on the Property for periods prior to the date of the exemption, if any.
4. Subject to Paragraph 5 below, the recoupment of costs required by this agreement are to be made on or before February 28th of each year. Any payments in lieu of tax not made when due shall thereafter bear interest at the highest rate allowable under applicable law.

5. The recoupment of costs provided for herein shall continue to be due and payable in the amounts specified herein until the date on which the Property is no longer eligible for real property tax exemption under T.C.A. Section 67-5-207 or T.C.A. Section 67-5-212.

6. The parties to this Agreement acknowledge that the County's costs to provide improvements, facilities and/or services to the Property may become greater than the amount of the recoupment of costs made pursuant to this Agreement, and that such costs may increase substantially during the time the Property is entitled to exemption from real property taxes. In consideration of the agreement by the County to accept these payments in lieu of real property tax, and in order to lessen the burden on the County of providing improvements, facilities or services to BGG, BGG shall cooperate fully with the County to re-negotiate the terms of this agreement every three (3) years from the date of this agreement.

7. The parties agree that the recoupment of costs provided for herein are entirely separate from, and in addition to, any payments that may be required for garbage fees, sewer fees or other similar fees that may be imposed on all residents of the County in the future.

8. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

\_\_\_\_\_  
A C Wharton, Jr., Shelby County Mayor

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Clerk of County Commission

ADOPTED: \_\_\_\_\_

## **AGREEMENT FOR PAYMENTS IN LIEU OF TAXES**

THIS AGREEMENT is made and entered into by and among Bearman Golden Gardens, Inc., a Tennessee not-for-profit corporation ("BGG"), and the County of Shelby (the "County"), on this the \_\_\_\_\_ of \_\_\_\_\_, 2008, for payments by BGG allowing the County to recoup the County's costs of providing improvements, facilities and services to BGG in-lieu-of real property tax, said Agreement effective upon tax exemption by the State of Tennessee. This Agreement is void unless and until said exemption is granted by the State.

WHEREAS, BGG is the owner of a certain parcel of real property particularly described on Exhibit "A" hereto, which property is located at 4755 Neely Road, Memphis, Shelby County, Tennessee, and which is identified in the office of the County Assessor under Tax Parcel Number 07608900000760 (the "Property"); and

WHEREAS, the Property is improved as a 55 one bedroom unit apartment building for elderly and handicapped persons, with one manager's unit attached, and has been built under Section 202 of the National Affordable Housing Act, and is located on the Property described in Exhibit "A"; and

WHEREAS, the Property is encumbered by a Deed of Trust recorded as Instrument Number LE 6213, and is subject to a Capital Advance Program Regulatory Agreement recorded as Instrument Number LE 6214 (the "HUD Documents"), all in the County Register's Office, and the HUD Documents require that the Property must be operated as rental housing for very low income elderly or disabled persons for a period of forty (40) years, ending as of June 2042, pursuant to the Deed of Trust with "HUD" and Section 202 of the National Housing Act of 1959 (12 U.S.C. Section 1701q); and

WHEREAS, T.C.A. Section 67-5-207 exempts from real property taxes property of Tennessee not-for-profit corporations built under Section 202 of the National Housing Act of 1959 used for housing for low income elderly or handicapped persons, upon compliance with law and State Board of Equalization ("SBOE") rules; and

WHEREAS, T.C.A. Section 67-5-207 (a) (2) provides for payments in lieu of real property taxes to be made by property owners granted an exemption under this Section in amounts not to exceed the estimated costs incurred by municipalities or counties to provide improvements, facilities and/or services to the property upon exemption; and

WHEREAS, BGG has applied to the SBOE for an exemption from real property taxes for the Property, and said exemption would be conditioned upon certain conditions, including the filing of an agreement with the State Board of Equalization for payments allowing local governments to recoup costs of facilities and services; and

WHEREAS, the County agrees that BGG complies with the conditions and intent of the statute, and that the Property and its intended use complies with the provisions of T.C.A. Section 67-5-207; and

WHEREAS, BGG and the County desire to enter this Agreement solely with Shelby County Government requiring BGG to reimburse the County for improvements, facilities and services provided to the Property in accordance with T.C.A. Section 67-5-207(a)(2).

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS SET OUT HEREIN**, the receipt and sufficiency of such being hereby acknowledged, the parties agree as follows:

1. Beginning with the effective date of the real property exemption for the Property granted by the State Board of Equalization, BGG shall pay to the County for each calendar year (and pro rata for any part of a calendar year for which the tax exemption is in effect) the total sum of **\$3,300.** which sum is calculated at Five (\$5) Dollars per unit per month, and shall be payable solely to Shelby County Government to reimburse the County for the costs of providing County improvements, facilities and services to the Property.

2. Within thirty (30) days of the granting of the tax exemption by the SBOE, BGG shall pay to the County all outstanding real property taxes on the Property for periods prior to the date of the exemption, if any.

3. Subject to Paragraph 3 below, the payments in lieu of tax required by this Agreement are to be made on or before February 28<sup>th</sup> each year. Any payments in lieu of tax not made when due shall thereafter bear interest at the highest rate allowable under applicable law.

4. The payments in lieu of tax provided for herein shall continue to be due and payable in the amounts specified herein until the date on which the Property is no longer eligible for real property tax exemption under T.C.A. Sections 67-5-207 or 67-5-212.

5. The parties to this Agreement acknowledge that the costs to the County to provide improvements, facilities and/or services to the Property may be greater than the amount of recoupment specified herein or as amended or modified pursuant to this Agreement, and that such costs may increase substantially during the time the Property is entitled to exemption from real property taxes. In consideration of the agreement by the County to accept payments in lieu of real property tax in amounts less than such costs, and in order to lessen the burden on the County of providing improvements, facilities and/or services to BGG, BGG agrees that it will cooperate fully with the County to examine and re-negotiate the terms of this agreement every three (3) years from the date of this agreement.

6. The parties agree that the payments in lieu of taxes reimbursing the County for costs provided for herein are entirely separate from, and in addition to, any payments that may be required for garbage fees, sewer fees or other similar fees that may be imposed on all residents of the City or County in the future.

7. This Agreement shall be governed by, and construed in accordance with, the law of the State of Tennessee, and shall further inure to the benefit of, and shall be enforceable by and against, the parties hereto, their respective successors and assigns.

8. BGG represents and warrants that it is a not-for-profit corporation duly organized and incorporated in the State of Tennessee; that it has received, and at all time during the period of this Agreement, will maintain federal tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and that the Property is and shall remain, at all times relevant during the period of this Agreement, in full compliance with the HUD Agreements, Deeds of trusts and other documents regarding the National Housing Act of 1959 and other applicable law affecting eligibility for exemption from real property taxes and compliance with HUD regulations.

**IN WITNESS WHEREOF**, BGG and the County have executed this Agreement the day and year first written above (to be effective upon and conditioned upon the Tennessee State Board of Equalization granting a tax exemption pursuant to Tenn. Code Ann. Section 67-5-207 for the Property.

**BEARMAN-GOLDEN GARDENS, INC.**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
SECRETARY

**COUNTY OF SHELBY, TENNESSEE**

BY: \_\_\_\_\_  
A C WHARTON, JR., COUNTY MAYOR

ATTEST:

\_\_\_\_\_  
CLERK OF COMMISSION

APPROVED AS TO FORM:

\_\_\_\_\_  
ASST. COUNTY ATTORNEY